Approved 5-2-91
Date

MINUTES OF THE House COMMITTEE ON Judiciary.

The meeting was called to order by Representative Denise Everhart, Vice Chairperson at
Chairperson

3:30 a.m./p.m. on March 4, 19 91 in room 313-S of the Capitol.

All members were present except:

Representatives Douville and Gregory who were excused

Committee staff present:

Jerry Donaldson, Legislative Research
Jill Wolters, Office of Revisor of Statutes
Gloria Leonhard, Secretary to the Committee

Conferees appearing before the committee:

Bonnie King, Preferred Services Escrow
Gwen Gunn, Realtor, Great Bend, Kansas
Dave Landis, representing Kansas Association of Redemption Specialists
Elwaine Pomeroy, representing Kansas Collectors Association Inc.
Walter M. Scott, Attorney, Topeka
Jay W. VanderVelde, Attorney, Emporia
Jim Clark, Kansas County and District Attorneys Association
Maggie Lutes, Assistant District Attorney for Shawnee County
Jamie Corkhill, SRS
Lila Paslay, Chair, Legislative Affairs Committee, The Association for Retarded Citizens of Kansas, Incorporated
Representative Henry Helgerson
Tim Henderson, Assistant District Attorney for Shawnee County
Carolyn Risley Hill, Acting Commissioner of Youth Services, Kansas Dept. of SRS

Vice-Chair, Representative Everhart called the meeting to order and called for hearing on HB 2248, prohibiting rent skimming.

Representative Vancrum, sponsor of HB 2248, appeared in support of the bill. (See Attachment # 1).

Chairman, Representative Solbach called for testimony from Bonnie King, Preferred Services Escrow, who testified regarding her personal experience in Olathe, Kansas. Ms. King urged the committee to pass HB 2248. No written testimony was submitted.

There were no committee questions.

Gwen Gunn, a realtor from Great Bend, Kansas, appeared in support of HB 2248, and related personal experiences of the effects of equiteering on realtors and taxpayers in general. No written testimony was submitted.

There were no committee questions.

Dave Landis, representing Kansas Association of Redemption Specialists, appeared in opposition to HB 2248. See (Attachment # 2). Mr. Landis said he opposes HB 2248. (See Attachment # 2). Mr. Landis said he opposes HB 2248 as it is written and noted his concerns.

Committee questions followed.

There being no further conferees, the hearing on HB 2248 was closed.

The Chairman called for action on HB 2374, victims rights to make a statement in presentence report; address the court at the sentencing hearing; and be informed before plea bargaining occurs.

Representative Hamilton made a motion that HB 2374 be amended on Page 1, in Line 24, after "officer" by inserting: ", with the assistance of the county or district attorney"; in Line 33 by striking all after the period; by striking all in Lines 34 through 36; in Line 37, by striking all before "Except. Representative Snowbarger seconded the motion. The motion carried.

Representative Hamilton made a motion that HB 2374 be passed as amended. Representative Macy seconded the motion.

Committee discussion followed.

Representative O'Neal made a substitute motion that HB 2374 be further amended on Page 2, in Line 38, by striking "Of the" and inserting "Before any"; in Line 39 by striking "before plea negotiations or bargaining take place" and inserting: "of the nature of any proposed plea agreement; in the title, in Line 8, by striking "negotiations" and inserting "agreements". Representative Sebelius seconded the motion. The motion carried.

The Chairman said he would make the Report of Standing Committee available to the committee before signing it.

Representative Hamilton made a motion that HB 2374 be passed as amended. Representative O'Neal seconded the motion. The motion carried.

The Chairman called for action on HB 2365, prohibiting possession of a firearm on school grounds. The Chairman explained proposed amendments to HB 2365 submitted by Joseph W. Zima, School District Attorney, with letter, dated March 4, 1991. (See Attachment # 3).

Representative O'Neal made a motion to amend HB 2365 as proposed by Mr. Zima. Representative Gomez seconded the motion.

Committee discussion followed.

Revisor's Staff submitted balloon bill (Attachment # 4).

Representative O'Neal, with consent of his second, amended his motion conceptually to strike Section 3 and re-number sub-section "c" in Mr. Zima's proposal and strike and insert certain language on Page 1, Lines 30 and 40 on staff balloon bill. The motion carried.

Representative Parkinson made a motion that HB 2365 be passed as amended. Representative Everhart seconded the motion. The motion carried.

The Chairman called for hearing of HB 2376, permissive joinder of parties.

Elwaine Pomeroy appeared on behalf of the Kansas Collectors Association, Inc. in support of HB 2376. (See Attachment # 5).

Mr. Pomeroy introduced Attorneys Walter M. Scott, Jr., Topeka, and Jay W. VanderVelde Emporia, for further clarification of permissive joinder of parties.

Mr. Scott said he represents credit bureaus of Topeka and of Kansas; that uniformity across the state is desirable; that Shawnee County Legal Aid supports the concept.

Committee questions followed.

Mr. VanderVelde said he has practiced this in two counties with no problems; that the court system is benefited by lesser workload; that his county experience has been good.

Committee questions followed.

Mr. Pomeroy suggested adding additional language on Page 1, Line 19 - "and join in the original petition." The Chairman requested that a balloon bill be prepared incorporating language to take care of committee concerns.

There being no further conferees, the hearing on HB 2376 was closed.

The Chairman called for hearing of HB 2231, redefining sodomy, and HB 2468, sodomy gender neutral.

Jim Clark, Kansas County and District Attorney's Association, appeared in support of both HB 2231 and HB 2468 and distributed Attachment # 6 regarding HB 2468.

Maggie Lutes, Assistant District Attorney for Shawnee County, testified that she supports making gender neutral as set out in HB's 2231 and 2468; that to pass both bills would be desirable.

Committee questions followed.

There being no further conferees, the hearing on HB's 2231 and 2468 was closed.

The Chairman called for hearing on HB 2468, recovery of state expenses for assistance provided to children, and HB 2488, child support notices to be mailed first class.

Jamie Corkhill appeared for SRS, in support of HB's 2486 and 2488. (See Attachments # 7 and # 8).

Representative Smith made a motion that HB 2486 and HB 2488 be passed. Representative Macy seconded the motion. The motion carried.

The Chairman called for hearing on HB 2220, child support for handicapped children through the age of 22.

Lila Paslay, Chair Legislative Affairs Committee, The Association for Retarded Citizens of Kansas, Inc., appeared in support of HB 2220. (See Attachment # 9).

Committee questions followed.

Representative Henry Helgerson, sponsor of HB 2220, appeared and noted the bill will give judges the needed authority to make decisions on a case by case basis.

Committee questions followed.

There being no further conferees, the hearing on HB 2220 was closed.

The Chairman called for hearing on HB 2232, court findings for valid court order for placement of child in need of care.

Representative Gomez, sponsor of HB 2232, introduced Mr. Tim Henderson, Assistant District Attorney for Shawnee County, who testified in support of HB 2232. Mr. Henderson said current law provides that if a child runs twice, a petition can be filed to place the child in a securer, locked facility; that HB 2232 provides that, if the child has been adjudicated once, as a child in need of care, he/she can be detained until a hearing can be held to determine whether he/she should be placed in a locked facility.

MINUTES OF THE House COMMITTEE ON Judiciary,

room 313-S, Statehouse, at 3:30 ~~a.m.~~/p.m. on March 4, 1991.

Committee questions followed.

Carolyn Risley Hill, Acting Commissioner of Youth Services, Kansas Department of SRS appeared to point out two negative consequences of HB 2232. (See Attachment # 10).

Committee questions followed.

There being no further conferees, the hearing on HB 2232 was closed.

The meeting adjourned at 5:25 PM. The next meeting is scheduled for March 5, 1991, in room 313-S.

GUEST LIST

COMMITTEE: HOUSE JUDICIARY DATE: 3/4/91

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
DAVE LANDIS	8410 W. 117th O.P. KS 66210	KANSAS ASS'N OF REDEMPTION SPECIALISTS
Walt Scott	Topeka Kan	Cabinet Makers & Millwork
Jo VanSickle	EMPORIA, KS	Attorney
Clarence Emery	Topeka	KS Collectors Assn
Martha Gabehart	Topeka	KS Comm. on Disability Concerns
Lee Parlay	Topeka	ARC / Lawrence
Margaret Leiter	Topeka	Shawnee County District Attorney
Timothy H. Henderson	Topeka	Shawnee Co. Asst. District Atty
JEFF DEGRAFFENREID	"	KPOA
CAROLYN RILEY HILL	"	SRS

STATE OF KANSAS

BOB VANCRUM
REPRESENTATIVE, TWENTY-NINTH DISTRICT
9004 W. 104TH STREET
OVERLAND PARK, KANSAS 66212
(913) 341-2609
STATE CAPITOL, ROOM 112-S
TOPEKA, KANSAS 66612
(913) 296-7698

TOPEKA

COMMITTEE ASSIGNMENTS
MEMBER: APPROPRIATIONS
JUDICIARY
TAXATION

HOUSE OF
REPRESENTATIVES

HB2248

March 4, 1991

TESTIMONY ON HB 2248

BY

REPRESENTATIVE ROBERT J. VANCRUM

Chairman Solbach and honorable members of the committee:

Thank you for agreeing to hear testimony on this bill relating to "rent skimming". Earlier this year you heard testimony concerning HB 2098, another bill supposedly restricting the practices of equiteers. Actually I think that bill may actively expand equiteering. The approach of the current bill is much preferable.

The veteran members of this committee will remember that equiteers are people who purchase equities of redemption from those unfortunates whose homes have been or are about to be foreclosed. The equity of redemption is what allows a debtor to remain in possession of his home for six months or in some cases one year after it has been foreclosed before he can be evicted. The historical purpose of having such a redemption period was to allow the debtor some time to try to come up with the money to purchase the property back from the person who purchased the property at the foreclosure sale (usally the holder of the first mortgage).

The equiteer typically promises to help the debtor regain possession of his home by helping him to find financing, etc. In its worst permutation, the equiteer persuades the debtor to leave and allow him to rent the home out to third parties. He then strips the home of any appliances or fixtures of exceptional value, moves in another desperate family that are willing to pay him exorbitant rents, all the time continuing to promise the debtor that he will help him repurchase the property at the end of the term. However, when the period of redemption runs out, the equiteer will either redeem the property from the mortgage holder if he thinks it's worth more than the mortgage holder paid or will simply walk away from the property and let the mortgage holder clean up the mess. In the process, the mortgage holder has received nothing for the occupancy of his property during the redemption period, the debtor receives very little for having given away his right to live in the property for some time (in fact he may be faced with a larger deficiency because the equiteer has removed value from the property) and only the equiteer has gained.

HJUD
Attachment # 1
3-4-91

Several states, including Colorado and California have recognized that "rent skimming" is a crime that should be prohibited. There is no justifiable reason why an equiteer should be able to rent out the property to third parties during the period of redemption and pocket the rent. If the equiteer is truly trying to help the debtor get back in possession, all rents should be paid to the holder of the mortgage in reduction of the mortgage debts and that's what is permitted by this bill. HB 2248 is modeled after the California statute. I prefer this approach because it also gives all other parties with an interest in the property the ability to recover the damages caused by the "rent skimming", with a penalty amount and including attorney fees. I had the revisor carefully model the bill after the California statute since to the best of my knowledge it has worked successfully there. There are several other people with me testifying today, including a couple of representatives from financial institutions.

One more word about HB 2098. I understand that this bill was reviewed and approved by Judicial Council this summer. I was very surprised to come into committee when this bill was heard and hear it supported by a gentleman who in my personal opinion is one of the biggest equiteers in our county. If you go back and carefully study the bill, it appears that it's <u>really</u> structured to clarify that all people who are successors or assigns of the debtor may exercise all his rights thereby <u>helping</u> some equiteers! Unless we are prepared to prohibit the really obnoxious practice, which is "rent skimming", we certainly should not get involved with prefering one type of equiteer over the other. I would urge you to adopt the approach of HB 2248 and reject the approach of HB 2098.

HJUD
ATTACH #1-2
3-4-91

March 1, 1991

Representative Bob Vancrum
Kansas Legislature
Room 511-S Statehouse
Topeka, KS 66612-1587

Dear Representative Vancrum:

With respect to House Bill 2248, we fully support this proposed legislation, and the passage into law of same to prohibit "Rent Skimming".

Thank you for your support.

Respectfully submitted,

Ann Kluender
Vice President

AK:jb

16TH & STONE / P.O. BOX 428 / GREAT BEND, KANSAS 67530

HJUD
ATTACH # 1-3
3-4-91

the FIRST NATIONAL BANK AND TRUST CO., GREAT BEND AND ELLINWOOD

1222 KANSAS AVENUE • GREAT BEND, KANSAS 67530 • PHONE: 316-792-1771 • FAX: 316-792-7665
HIGHWAY 56 AND HUMBOLDT AVENUE • ELLINWOOD, KANSAS 67525 • PHONE: 316-564-2900 • FAX: 316-564-3284

March 1, 1991

Honorable Robert Vancrum
Kansas Legislature
Room 511-S, Statehouse
Topeka, Ks. 66612-1587

Dear Representative Vancrum:

I want to endorse HB 2248. I fine the "Rent Skimming" tactic repulsive and expensive for all good citizens that pay their taxes. The penalties listed in HB 2248 are appropriate for the crime committed.

If I can be of any help concerning HB 2248, please feel free to contact me.

Sincerely,

Kevin Sundahl
Vice president

KS/el

HJUD
ATTACH A 1-4
3-4-91

TESTIMONY BEFORE HOUSE JUDICIARY COMMITTEE
H.B. 2248
MARCH 4, 1991

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

My name is Dave Landis. I have been a Real Estate Broker in Kansas since 1975 and licensed since 1973. Prior to real estate, I was in International and Domestic lending for 16 years,5years inEurope and the Carribean. I have degrees in Geology and Political Science. I am a native Kansan, having grown up in Overland Park when I knew all 300 people by first name. I want to thank you for this opportunity to present my views and recommendations about this bill. I might also add that I am expressing the views of the Kansas Association of Redemption Specialists, a group of Real Estate Brokers specializing in working with people in foreclosure.

Although I think this bill is without merit to be advantageous to a single citizen in the State of Kansas, I also believe that it would not hold up in a court of law. Apparently, Representative Vancrum has used California, Colorado, Texas or Missouri laws as a guideline in drafting this legislation. The problem with this it should be noted is these states use a Deed of Trust as a lending instrument which leaves the title or deed to the property in the hands of the lender. Title does not pass until the last payment is made. Therefore, in those states it would be logical that any rents or profits should inure to the deed holder-the lender. However in Kansas, we have a different theory of lending-the mortgage lien theory-which provides that the deed is transferred to the buyer of real property at the closing even when there is a lien. The lien is perfected by a promissory note and secured by a chattel mortgage. In order for the deed to be returned to the lender, a judicial foreclosure must occur.

As Attorney's, you know that along with a deed comes a "bundle of rights" which include the "right to possession",the right to rent the property", the "right to profit" and the "right to quiet enjoyment". These are inalienable rights. Therefore a Kansas owner of real property is given rights that California, Colorado, Texas and Missouri real property owners do not have if they have a lien on the property. Also it should be noted that none of these states provide a redemption period for the borrower.

Another fact that needs to be considered when looking at this bill is its contradiction of provisions in H.B. 2098 which is before this committee that was introduced by the Committee on Judiciary to the House, February 1, 1991.

The only purpose of H.B. 2248 as written and as applied to Kansas Laws would be to keep investors from investing in Kansas residential real estate and make every home buyer a potential criminal, if he rents his home in the first year of the mortgage. This may occur more times than you would think.

We have just experienced a war in which many of our young families in Kansas have had their lives disrupted, incomes reduced and in some instances wifes and children have had to move and rent their homes in order to have enough money to live. In Kansas, I have not heard of a single family losing their home yet due to Desert Storm, but in Colorado as shown on the television program "60 Minutes", the troops are coming home to no home. Do we really want Kansans to suffer these kinds of hardships? If H.B. 2248 is not for the benefit of Kansas citizens, then we need to ask ourselves who is going to be the beneficiary of this legislation? Well, it appears that it is Out of State Lenders who will benefit, thats who. If that is the case then let them not lend here if our laws are so bad. But we know that this will never happen as they are stumbling over themselves trying to make loans in Kansas-where the people are honest and hardworking and pay their bills. Kansas is not at the forefront of Savings and Loan scandals and fraud like, California, Colorado and Texas-far from it. We don't need their laws-ours work just fine-for the citizens of Kansas and the honest Kansas lenders.

HJUD
Attachment #2
3-4-91

If this committee or the legislature is truly interested in passing this type of legislation, the following must be considered.

1. The entire lending process and lending laws would have to be changed. The laws are presently on the books for mortgage lending. We would have to become a Deed of Trust state.

2. Bankruptcy Trustees rent homes in foreclosure and keep the rents for themselves.

3. If you exclude them, you will set up classes that are doing the same activity- one class legal and one class illegal. This would be unconstitutional.

4. Lenders would be required to accept partial payments on delinquent loans which they refuse to do now. You can not refuse to accept payment from some people and then prosecute another as a criminal for not turning over rents.

5. The entire Bill if enacted into law would breed a plethora of lawsuits, criminalize the law and would not benefit a single consumer in Kansas.

HJUD
ATTACH # 2-2
3-4-91

March 4, 1991

The Honorable John M. Solbach
Room 115-S
State Capitol Building
Topeka, Kansas 66612

Re: H.B. 2365

Dear Representative Solbach:

I have attempted to amend H.B. 2365 as we discussed by phone this morning. You know what we are trying to accomplish, so I would defer to your judgment as to how best to word the bill. Please let me know if there is anything I can do to further the bill's progress.

Yours truly,

Joseph W. Zima
School District Attorney

JWZ:jl
Enclosure
c: Dr. Gary A. Livingston
Superintendent of Schools

Dr. Ronald L. Epps
Associate Superintendent/Educational Services

Mr. Onan C. Burnett
Director of Community/Governmental Relations

HJUD
Attachment #3
3-4-91

Session of 1991

HOUSE BILL No. 2365

by

Committee on Judiciary

AN ACT concerning crimes and punishments; relating to the possession of a firearm on school grounds; amending K.S.A. 1990 Supp. 21-4204 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Sec. 1. K.S.A. 1990 Supp. 21-4204 is hereby amended to read as follows: 21-4204. (1) Unlawful possession of a firearm is:

(a) Possession of any firearm by a person who is both addicted to and an unlawful user of a controlled substance;

(b) possession of a firearm with a barrel less than 12 inches long by a person who, within five (5) years preceding such violation has been convicted of a felony under the laws of Kansas or any other jurisdiction or has been released from imprisonment for a felony; ~~or~~

(c) possession of any firearm by any person who, within the preceding 10 years, has been convicted of a crime to which this subsection (1)(c) applies, or has been released from imprisonment for such a crime, and has not had the conviction of such crime expunged or been pardoned for such crime;

(d) possession of any firearm by any person, other than a law enforcement officer, in or on any school property upon which is located a building or structure used by a unified school district or an accredited

HJUD
ATTACH #3-2
3-4-91

nonpublic school for student instruction or attendance or extracurricular activities of pupils in kindergarten or any of the grades 1 through 12; or

(e) refusal to surrender or immediately remove from school property any firearm in the possession of any person, other than a law enforcement officer, when so requested or directed by any duly authorized school employee or any law enforcement officer.

(2) Subsection (1)(c) shall apply to a felony under K.S.A. 21-3401, 21-3402, 21-3403, 21-3404, 21-3410, 21-3411, 21-3414, 21-3415, 21-3419, 21-3420, 21-3421, 21-3427, 21-3502, 21-3506, 21-3518, 21-3716, 65-4127a or 65-4127b, and amendments thereto, or a crime under a law of another jurisdiction which is substantially the same as such felony.

(3) Subsection (1)(d) shall not apply to:

(a) possession of any firearm in connection with a firearms safety course of instruction approved and authorized by the school; or

(b) possession by a licensed hunter of an unloaded rifle or shotgun within a locked motor vehicle; or

(c) any possession of any firearm specifically authorized in writing by the superintendent of any unified school district or the chief administrator of any accredited nonpublic school.

(4) Violation of subsection (1)(a) is a class B misdemeanor; violation of subsection (1)(b) or (1)(c) is a class D felony; violation of subsection (1)(d) is a class B misdemeanor; violation of subsection (1)(e) is a class A misdemeanor.

Sec. 2. K.S.A. 1990 Supp. 21-4204 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the Kansas Register.

H JUD
ATTACH # 3-3
3-4-91

Session of 1991

HOUSE BILL No. 2365

By Committee on Judiciary

2-14

AN ACT concerning crimes and punishments; relating to the possession of a firearm on school grounds; amending K.S.A. 1990 Supp. 21-4204 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1990 Supp. 21-4204 is hereby amended to read as follows: 21-4204. (1) Unlawful possession of a firearm is:

(a) Possession of any firearm by a person who is both addicted to and an unlawful user of a controlled substance;

(b) possession of a firearm with a barrel less than 12 inches long by a person who, within five years preceding such violation has been convicted of a felony under the laws of Kansas or any other jurisdiction or has been released from imprisonment for a felony; ~~or~~

(c) possession of any firearm by any person who, within the preceding 10 years, has been convicted of a crime to which this subsection (1)(c) applies, or has been released from imprisonment for such a crime, and has not had the conviction of such crime expunged or been pardoned for such crime~~.~~; *or*

(d) possession of any firearm by any person, other than a law enforcement officer, in or on any school property upon which is located a building or structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades 1 through 12. except as provided further,

The superintendent of such school, or in the case of a nonpublic school, the person designated as chief administrative officer by the governing authority of the school, in writing, may allow a firearm in or on school property.

(2) Subsection (1)(c) shall apply to a felony under K.S.A. 21-3401, 21-3402, 21-3403, 21-3404, 21-3410, 21-3411, 21-3414, 21-3415, 21-3419, 21-3420, 21-3421, 21-3427, 21-3502, 21-3506, 21-3518, 21-3716, 65-4127a or 65-4127b, and amendments thereto, or a crime under a law of another jurisdiction which is substantially the same as such felony.

(3) Violation of subsection (1)(a) is a class B misdemeanor; violation of subsection (1)(b) or (1)(c) is a class D felony; *violation of subsection (1)(d) is a class E felony.*

Sec. 2. K.S.A. 1990 Supp. 21-4204 is hereby repealed.

Attachment # 4

HJUD Attach # 4 3-4-91

March 4, 1991

TESTIMONY IN SUPPORT OF HOUSE BILL 2376
HOUSE JUDICIARY COMMITTEE

I am Elwaine F. Pomeroy, appearing on behalf of the Kansas Collectors Association, Inc., in support of House Bill 2376. This bill would amend our permissive joinder of parties statute to make it clear that several plaintiffs may join in one action if they have claims against the same defendant or defendants. This is not a new concept, because it has been in practice in some judicial districts for several years. The subject has been discussed in other judicial districts.

I am not a collection lawyer, but I have asked two lawyers who have practiced extensively in the field of collections to explain to you the advantages of permitting joinder of several plaintiffs against the same defendant. After I conclude my brief remarks, I will ask Walter N. Scott, Jr., of Topeka to explain the advantages from his point of view, and his discussions with court officials concerning this procedure. I will also call upon Jay W. Vander Velde, of Emporia, who has been utilizing this procedure for more than ten years, as I understand.

This procedure benefits everyone involved. Passage of this legislation would insure that this procedure was available throughout the state. Permissive joinder of several plaintiffs has these advantages:

A. It reduces the number of law suits that have to be filed.

B. It saves the time of judges, because several matters can be concluded at one time.

C. It reduces the burden on the clerks of the court.

D. It reduces the burden on the process servers.

E. It permits the recovery of smaller debts.

F. It reduces cost to the plaintiffs.

G. Defendants can dispose of their obligation to several plaintiffs in one action.

HJUD
Attachment #5
3-4-91

H. Defendants have fewer lawsuits filed against them.

I. Defendants end up paying a smaller amount of court costs because fewer cases are filed against them.

J. Defendants are spared some embarrassment by the reduction in the number of suits filed against them.

The existing statute provides the framework for the procedure, as noted in lines 24 through 35.

Section 1 of the bill makes the change with regard to Chapter 60 cases, the general Code of Civil Procedure. Section 2 of the bill makes those changes also applicable to Chapter 61 cases, for Limited Actions procedures.

HJUD
ATTACH # 5-2
3-4-91

Kansas County & District Attorneys Association

827 S. Topeka Ave., 2nd Floor • Topeka, Kansas 66612
(913) 357-6351 • FAX # (913) 357-6352
EXECUTIVE DIRECTOR • JAMES W. CLARK, CAE

Testimony in Support of

HOUSE BILL 2468

The Kansas County and District Attorneys Association requested House Bill 2468, and we thank the House Legislative Committee for introducing it and giving us an opportunity to testify in its support.

The purpose of the bill is to amend the definition of sodomy to make it gender neutral. The present statute was amended during the 1991 Legislative Session to address the Kansas Supreme Court's decision in State v. Moppin, 245 Kan. 639, in which the Court ruled that oral-genital contact between the defendant and the five-year-old female victim (more commonly known as "cunnilingus") did not come under the statutory definition of sodomy. The legislation was first proposed as Senate Bill 687, amended several times, and subsequently merged into House Bill 2666 in its present form. Unfortunately, in response to the specific facts of the Moppin case, the 1990 amendment only prohibited conduct of a male perpetrators. Due to a lack of imagination by both lobbyists and legislators alike, there was no consideration of female perpetrators. It was not until State v. Schad, 247 Kan. 242, that the applicability of the statute to female perpetrators was considered, and rejected, by the Supreme Court. That decision, involving cunnilingus by a mother on her five-year old female child, actually follows the holding in Moppin, but the Court also noted that the 1990 amendments would not have covered the facts of the case.

Presently, the conduct prohibited by K.S.A. 1990 Supp. 21-3506 applies to acts of cunnilingus only if committed by a male. Yet there is no evidence or rationale that a child under 16, or any other victim for that matter, is less harmed or less violated, if their assailant is female. For this reason, we ask your support for House Bill 2468.

HJUD
Attachment # 6
3-4-91

Department of Social and Rehabilitation Services
Robert C. Harder, Acting Secretary

House Bill 2486

Before the House Judiciary Committee
March 4, 1991

The primary responsibility of the SRS Child Support Enforcement Program is to help children by establishing regular and adequate support payments and by enforcing past due support obligations. From that perspective, SRS has requested introduction of this legislation.

The purpose of HB 2486 is to correct statutory cross-references in K.S.A. 20-164(a), K.S.A. 38-1512(c), and K.S.A. 38-1616(c). The bill adds a reference in each to K.S.A. 39-718b, the present codification of SRS' authority to file suit and recover from absent parents the unreimbursed public assistance provided for their children. In 1988, the Legislature significantly rewrote the reimbursement law, formerly found at K.S.A. 39-718a. When it was inserted in the statute books, the new law was numbered K.S.A. 39-718**b**.

The three statutes each refer to K.S.A. 39-718a in a list of statutory cross-references. The statutes need to include reference to K.S.A. 39-718b, the successor to K.S.A. 39-718a, to prevent the erroneous conclusion that K.S.A. 39-718b was intentionally omitted.

It should be noted that the existing references to K.S.A. 39-718a have intentionally been left in place, to insure that existing judgments obtained under the old reimbursement statute are not thrown into question.

The three statutes amended by HB 2486 would not be fundamentally changed. K.S.A. 20-164(a) defines actions subject to expedited judicial processes; its amendment would insure use of expedited processes for K.S.A. 39-718b judgments. K.S.A. 38-1512(c) (code for care of children) and K.S.A. 38-1616(c) (juvenile offenders code) concern reimbursement of the social welfare fund through specific court actions. The proposed amendments would eliminate ambiguities created by inconsistency with K.S.A. 39-718b.

The change in K.S.A. 20-164(a) would require revision of Supreme Court Rule 172 (Expedited Judicial Process) to also include reference to K.S.A. 39-718b. From informal contacts with the Office of Judicial Administration, SRS does not anticipate any obstacles to that change.

Fiscal impact. If the corrections are not made, the potential annual cost is estimated at $21,705 per year, but it could run as high as $206,307 per year. The lower estimate assumes less efficient use of legal staff and relatively small losses in collections. The higher estimate assumes decreased efficiency and higher collection losses for foster care reimbursement, either from losing a few very large cases or by receiving an adverse decision on appeal.

For these reasons, SRS respectfully requests this committee recommend HB 2486 for passage.

Jamie L. Corkhill
Child Support Enforcement
296-3237

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3-4-91

Department of Social and Rehabilitation Services
Robert C. Harder, Acting Secretary

House Bill 2488

Before the House Judiciary Committee
March 4, 1991

The primary responsibility of the SRS Child Support Enforcement Program is to help children by establishing regular and adequate support payments and by enforcing past due support obligations. From that perspective, SRS has requested introduction of House Bill 2488.

Summary. This bill amends K.S.A. 23-4,145, concerning the notice that is sent before SRS reports a support debt to credit reporting agencies (credit bureaus). The amendment would clarify that first class postage is sufficient.

Background. With the Child Support Enforcement Amendments of 1984, the Congress required states to adopt procedures for sharing information about support debts with credit reporting agencies, but only after sending notice to the absent parent. A particular method of sending notice was not specified, so first class mail meets the mandate. Also, federal law only requires that the notice be sent before debt information is shared; states are not required to verify delivery.

Other creditors, such as retail stores, are not required to give the debtor any advance notice before reporting debts to credit reporting agencies. It does not matter whether the debt is large or small, whether the debt has been reduced to judgment, or whether the first payment is even due. In comparison, the advance notice for a child support debt is an extraordinary protection, no matter how it is sent.

The extraordinary nature of the credit reporting notice is reinforced when it is considered that debts for unpaid support are final judgments under Kansas law -- the debtor has had a day in court and a continuing opportunity to seek modification as circumstances warranted. Furthermore, most post-judgment remedies that immediately attach property, such as wage garnishments and bank garnishments, require no advance notice at all to the debtor. Again, the advance notice for a child support debt is an extraordinary protection, no matter how it is sent.

In practice CSE has found that a significant number of debtors will not pick up or accept certified mail -- particularly now that petitions may be served by certified mail -- defeating the notice's purpose of stimulating early resolution of disputes.

Fiscal Impact. KAECSES, the SRS computer system, was programmed to generate these notices and prepare them for first class mailing. Because of the volume, a significant savings could be realized if K.S.A. 23-4,145 were amended to authorize use of first class mail and avoid the extra postage and manual handling needed for certified mail.

CSE expects to send 5,200 notices before the end of the current fiscal year. Thereafter, approximately 15,000 additional cases per year are expected to meet

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minimum criteria for submission. First class postage is now $.29 per notice, while certified mail with a return receipt costs $2.29 per notice.

If K.S.A. 23-4,145 were amended upon publication in the Kansas Register, expenditures could be reduced during the current fiscal year, with the exact savings depending upon the enactment date. If 5,200 notices were sent in FY91 by first class mail, the total savings in postage would be $10,400. First class mail would also require less labor, at a savings of approximately $2,387. **Total (potential) FY91 savings: $12,387.**

CSE anticipates 15,000 notices per year beginning in FY92. With first class mail, postage would be reduced by $30,000 per year. Reduced labor costs would be approximately $7,065. **Total savings for FY92 and subsequent years: $37,065 per year.**

Federal performance standards for the Child Support Enforcement Program require that IV-D support debts in excess of $1,000 be reported to credit reporting agencies. The CSE budget for FY92 includes $5,444 postage for credit reporting notices, enough to cover first class postage for all the notices needed to meet those federal standards. Using certified mail, however, the budgeted amount would only permit 2,377 notices to be mailed, not enough to meet federal performance requirements. If the CSE Program were audited and found deficient in this area, escalating penalties could be assessed. Over time, federal penalties could range from $670,000 per year to $78,000,000 (complete withdrawal of all CSE and AFDC federal funding).

For the reasons outlined above, SRS respectfully requests that House Bill 2488 be recommended for passage.

Jamie L. Corkhill
Child Support Enforcement
296-3237

HJUD
ATTACH # 8-2
3-4-91

THE ASSOCIATION FOR
RETARDED CITIZENS OF KANSAS, INC.

P.O. BOX 676 • HAYS, KS 67601

Hope through understanding

March 4, 1991

TO: Rep. John Solbach, Chairman
Members of the House Judiciary Committee

FROM: Lila Paslay, Chair
Legislative Affairs Committee

RE: H.B. 2220

The Association for Retarded Citizens of Kansas represents approximately 5,000 individuals in the state. The persons are members of 37 local units in Kansas.

ARC/Kansas supports H.B. 2220. We firmly believe this change in existing statute would help to insure that young adults with mental and/or physical handicaps would have additional needed financial support.

Many families have a signficant drain on their financial resources trying to provide specialized equipment, non tax deductible medical expenses, or child care. Many of their needs continue to be required far beyond the age of 18 years. Child care for working parents is tax deductible, child care for respite is not. Cost for providing care is much more expensive than for non handicapped and for many it continues for the lifetime of their child with handicaps.

Costs such as special foods, diapers, special clothing, and transportation will, for many families, continues even though the state does not currently recognize these special families.

Recently in the Topeka Capital Journal an article appeared which discussed the need for foster families for residents at the Kansas Neurological Institute. One of the reasons given for families resorting to institutionalization for their child was the financial problems families suffered trying to provide for their son or daughter with a handicap.

I have attached an article from the March 1, 1991 Kansas City Star which describes the plight of families with non handicapped children. This article indicates that the average income of single parent families falls by 37% within four months of the breakup. I can only emphasize to you that for the family that has a child with a handicap, it can get worse.

We urge your support of H. B. 2220. We believe it is in the best interest of the child as well as the state.

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K.C. Star 3-1-91

Divorce hits home, and children, financially

Average income of single-parent family quickly falls by 37%, pushing many below poverty level.

By JENNIFER TOTH
Los Angeles Times

WASHINGTON — Divorce and separation take a significant economic toll on American children, pushing many below the poverty line and increasing dependency on welfare programs, according to a Census Bureau report to be released Friday.

The average income of the single-parent families created by divorce or separation falls by 37 percent within four months of the breakup, the study found, in almost all cases reflecting the financial effect of the father's departure from the family unit.

"This study is more dramatic confirmation of how far the standard of living falls after breakups," said Prof. Andrew J. Cherlin, a sociologist at Johns Hopkins University and author of a book on divided families. "It's a national scandal."

At the same time, the study's authors noted that economic problems tend to predate divorce and separation, suggesting that financial stress may be a cause as well as a result of the family breakup.

Fathers more often were working in families that remained together than in families that later split up, the study found. Only 67 percent of fathers in the surveyed families were employed, it said, compared with 83 percent in stable, two-parent families.

The study, "Daily Disruption and Economic Hardship: The Short-Run Picture for Children," tracked the effects of divorce and separation on 200 children across the country from October 1983 through May 1986.

It found that the proportion of children living in poverty increased from 19 percent at the time of divorce to 36 percent four months after the family breakup, causing many families to turn to social welfare programs.

Of the children surveyed, 9 percent were in families receiving Aid to Families with Dependent Children before the separation. The figure doubled to 18 percent during the four months following the breakup and increased to 22 percent one year later.

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Department of Social and Rehabilitation Services

Testimony before

The House Judiciary Committee

Regarding

House Bill 2232

on

March 4, 1991

Carolyn R. Hill
Acting Commissioner of Youth Services
Kansas Dept of Social & Rehabilitation Services
913/296-3284

HJUD
Attachment # 10
3-4-91

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Robert C. Harder, Acting Secretary

Testimony on House Bill 2232

AN ACT CONCERNING THE CODE FOR THE CARE OF CHILDREN;

RELATING TO PLACEMENT

Mr. Chairman, Members of the Committee, I appear before you today regarding H. B. 2232.

The Statute being amended (KSA 38-1568) was specifically designed to provide the courts with a measure to deal with chronic runaways (i.e., those who run from placement more than twice). We currently have one, 14 bed secure facility in Wichita which has a continual waiting list of six to ten chronic runaway youth.

The proposed amendment incorporated in H.B. 2232 makes <u>all</u> CINCs subject to provisions that if they run from placement, they may be found in violation of a valid court order and places them in the custody of the Secretary for placement in a secure facility for a 60 day period with two, 60 day extensions possible. This means that a child victim, such as a child who is physically or sexually abused, an abandoned child, or one without adequate parental care, can, without having been adjudicated a runaway under KSA 38-1502 Section A 10, be placed in a secure facility.

The bill has, from our perspective, at least two negative consequences: (1) The estimated fiscal impact for FY 1992 is

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$1,125,654, with probable increases of 15% in each of the two subequent fiscal years. It would be necessary for us to establish additional secure care facilities at a probable rate of $100 per day per bed.

(2) The passage of this bill will place us in violation of the federal Juvenile Justice and Delinquency Prevention Act from which we currently derive $470,000 per year. The current statute was written to meet the "valid court order" provisions of the JJDP Act which specifically allow the use of secure confinement for chronic runaways, but specifically state that a "non offender such as a dependent or neglected child cannot be placed in a secure facility for violating a valid court order". (Federal Register, Vol. 47, No. 158, p 35687)

Robert C. Harder
Acting Secretary
Dept of Social & Rehabilitation Services
913/296-3217

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ATTACH # 10-3
3-4-91